IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1616 of 2007 (S/S)

Deepika Chaunsali
W/o Shri Mohan Chaunsali
R/o Village Nera Pithoragarh
District Pithoragarh.

…….. Petitioner

Versus

1. State of Uttarakhand
   through Education Secretary
   Dehradun.
2. State of Uttarakhand
   through Director of Education
   Uttarakhand, Dehradun.
3. District Education Officer
   District Pithoragarh.
4. Additional District Education Officer (Basic)
   District Pithoragrah.

…… Respondents

Mr. Lalit Samant, Advocate for the petitioner.
Mr. H.M. Raturi, Standing Counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

Heard Mr. Lalit Samant learned counsel for the petitioner and Mr. H.M. Raturi, learned Standing Counsel appearing for the respondents.

2) By means of this writ petition, the petitioner has challenged the impugned order dated 03.10.2007, passed by respondent No. 4, rejecting the representation of the petitioner regarding payment of her salary from Primary School Supokhara.

3) It appears that earlier the petitioner filed Writ Petition No. 1197 (S/S) of 2007, seeking mandamus for payment of salary, stating that she has been transferred from Primary School Askot to Primary School Supokhara. The petitioner is an Assistant Teacher. Said writ petition was decided by another Bench of this Court on 30.08.2007, with following directions:

> *"in the circumstances, I deem it fit and proper to direct the petitioner to make a representation before the Additional District Educatoin Officer (Basic) Pithoragarh for redressal of her grievances, if such a representation is moved before the Additional District Education Officer (Basic) Pithoragarh, He is directed to take decision on the representation of the petitioner and make payment of salary to the petitioner within a period of three weeks from the date of production of a certified copy of this order along with the representation, if there is no any legal hurdle."*

4) It appears that in compliance of said order, the impugned order dated 03.10.2007 (copy Annexure-20 to the writ petition) is passed by respondent No.4, concluding as under:

> ''याची श्रीमति दीपिका चौंसाली, स0अ0 प्रा0वि0 अस्कोट प्रथम सक्षम अधिकारी के बिना स्वतः कार्यमुक्त होकर अन्यत्र विद्यालय प्रा0वि0 सुपोखरा में स्वेच्छा से कार्य कर रही है । ष्षासनादेष संख्या 845/XXXIV(1)/2005–54/2005 दिनांक 12दिसम्बर 2005 द्वारा उत्तराखण्ड राज्य के प्राथमिक विद्यालय में 30 सितम्बर 2007 की छात्र संख्या को आधार मानकर विद्यालयवार

40 : 1 छात्र अध्यापक के अनुपात में अध्यापको की गणना निर्धारित किये जाने का प्राविधान किया गया जिसमें 100 छात्र संख्या पर 02 अध्यापक, 101 से 140 तक 03 अध्यापक संख्या निर्धारित की गयी है । प्रा0वि0 सुपोखरा की छात्र संख्या 30 है और जहां 02 अध्यापक पूर्व से ही कार्यरत हैं। सन्दर्भित षासनादेषानुसार 30 छात्र संखया पर 02 ही अध्यापकों की आवष्यकता है ।

अतः षासनादेष संख्या 845/XXIV(1)/2005– 54/2005 दिनांक 12 दिसम्बर 2005 के अनुपालन में श्रीमती दीपिका चौंसाली स0अ0 का वेतन भुगतान प्रा0वि0 सुपोखरा से आहरित किया जाना सम्भव नही है । अनुकम्पा के आधार पर इसी प्रकार के जनपद में अन्य प्रकरण भी हैं, जिनके सम्बन्ध में षासन/निदेषालय स्तर पर कार्यवाही चल रही है । अतः प्रा0वि0 सुपोखरा से श्रीमती दीपिका चौंसाली, स0अ0 का वेतन आहरित किये जाने पर कानूनी बाधा आयेगी।

अतः याची श्रीमती दीपिका चौंसाली, स0अ0 के प्रत्यावेदन दिनांक 14.09.2007 तथा सम्बन्धित तथ्यों पर समयक विचारोपरान्त प्रत्यावेदन उपरोक्तानुसार निस्तारित किया जाताा है।''

5) Learned counsel for the petitioner drew attention of this Court to Annexure-14 to the writ petition, which is copy of Directorate's letter No. Basic (Sthana.-4)/46999-41024/2005-06 dated 14 December 2005, whereby the Director of Education has directed the District Education Officer, Pithoragarh, to transfer the petitioner from Primary School Askot to any of the primary School of Bastey, Satsiling, Supokhara, Ghunseragaon, where there is vacancy. Learned counsel for the petitioner could not show this Court any order of the District Education Officer directing the petitioner to be transferred to Primary School

Supokhara, However, he relied on Annexure-15, which is relieving order of the Head Master / Headmistress of Primary School Askot (first), in which it is mentioned that in pursuance to the Government Order, the petitioner is relieved w.e.f. 05.01.2006 for Primacy School Supokhara. Annexure -16 to the writ petition, is the copy of the joining report submitted by Head Master / Headmistress of Primary School, Supokhara to the Additional District Education Officer (Basic) stating that in pursuance to the order No. Basic (Sthna.) / 46999-41024/ 2005-06 dated 14 December 2005, petitioner has been permitted to join in the Primary School at Supokhara w.e.f. 1st February 2006.On the basis of these two documents it is being argued that the petitioner has wrongly been denied salary in Primary School Supokhara. But the argument of learned counsel for the petitioner is lame, as there is no transfer order passed by District Education Officer or Additional District Education Officer (Basic) in pursuance to the Directorates' Circular Letter No. Basic (Sthana. -4)/46999 -41024/2005-06 dated 14 December 2005. Until and unless, there was vacancy in Primary School Supokhara, the petitioner could not have been posted in that school. The impugned order shows that the petitioner appears to be surplus teacher in Primary School Supokhara, where the sanctioned strength is only of two teachers. In the circumstances, this Court finds that petitioner herself is partly responsible for this state of affairs, as without waiting for the orders from the Additional District Education Officer for the school where the vacancy existed, she got relieved from Primary School Askot (first), joined in Primary School Supokhara.

6) Having heard learned counsel for the parties, in the above circumstances, this writ petition is disposed of with the following directions:

i) The Petitioner shall immediately join back her duties at Primary School Askot (first), Pithoragrah.

ii) On her joining back there, she may make a representation to the authorities concerned from there for release of her salary, as she has worked in primary School Supokhara bona fide, in view of the Directorates' order date 14th December 2005 (copy Annexure-14 to the writ petition), and on being relieved by the Head Master/Headmistress at Askot.

iii) The respondent No. 4 shall consider the representation of the petitioner made by her after joining back her duties at Primary School Askot and release her salary within a period of one month from the date certified copy of this order is produced before such authority along with the representation.

(Prafulla C. Pant, J.)

Dt. November 02, 2007.
H.Negi